ITA 41/2004
BEFORE
HON'BLE MR JUSTICE P.G.AGARWAL
HON'BLE JUSTICE MRS. A HAZARIKA

Heard Dr.A.K.Saraf, learned Senior Counsel for the appellant and Mr. U.B huyan, learned counsel appearing for the Respondent Revenue.

The pressent appeal was admitted to be heard on the following substantia l question of law:-

\(1) Whether on the facts and in circumstances of the case the issuan ce of notice u/s 143(3) of the Income Tax Act, 1961 within the prescribed time l imit for the purpose of making the asessment under Section 143(3) of the Income Tax Act, 1961 is mandatory ? and

(2) Whether, on the facts and in the circumstances of the case and i n view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made u/s 68 of the Income Tax Act, 1961 should be delete d or set aside?\

Dr. Saraf has submitted that so far the question No.1 is concerned, it c ame up for consideration before this Court in ITA No.40/2004 and this Court vide order dated 09.01.2007 held that the provisions of Section 142 and sub-section (2) and (3) of Section 143 will have mandatory application in a case where the Assessing Officer in repudiation of the return filed in response to a notice iss ued under Section 158BC(a) proceeds to make an inquiry. The defects crept in can not be cured at this stage in view of the limitation provided in Section 143(2).

It may be mentioned here that in the appeal, the question was recasted b y the court. Dr. Saraf has further submitted that limitation will apply in case of Block Assessment only and so far individual assessment is concerned there is no dispute in the matter, and it is not the subject matter in this case. In the present case, the qeustion is regarding Block Assessment arising out of certain search and seizure. The question is, therefore, answered in favour of the appell ant and against the revenue.

It is submitted that in view of the decision in Question No.1, the secon d question does not arise. We hold accordingly.

The appeal is allowed. The impugned orders passed by the authority conce rned stands set aside.